

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1776 OF 2019

Jagdish Suresh Kudekar
Age adult, Indian Inhabitant,
residing at Bhagirathi, F/103,
Ganesh Nagar, Badlapur (West),
Taluka – Ambernath, District – Thane.

...Petitioner
(Detenu)

Vs.

1. The Commissioner of Police, Thane.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra, Mantralaya,
Home Department, Mantralaya, Mumbai.)

3. The Superintendent
Nashik Road Central Prison, Nashik.

4. The Secretary,
Hon'ble Advisory Board,
Constituted under Section 9 of
M.P.D.A. Act, 1981, Mantralaya,
Mumbai 400 032.

...Respondents

Mr. U.N. Tripathi a/w Ms. Jayshree Tripathi for the petitioner.
Ms. M.H. Mhatre, APP for the State.

**CORAM : INDRAJIT MAHANTY &
N.B. SURYAWANSHI, JJ.**

JUDGMENT RESERVED ON : 17TH SEPTEMBER, 2019.

JUDGMENT PRONOUNCED ON : 27TH SEPTEMBER, 2019.

JUDGMENT : (Per N.B. SURYAWANSHI, J.)

The petitioner by this petition questions the legality and validity of the detention order dated 14th February, 2019 at Exhibit 'A' by which the petitioner was directed to be detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred as 'the said Act' for short).

2. Rule was granted in the Petition vide order dated 11th April, 2019.
3. Heard the learned counsel for the petitioner and the learned APP for the State.
4. We have gone through the record.

5. The learned counsel for the petitioner pressed into service the ground Nos.5(g), 5(i), 5(n), 5(j) to challenge the impugned order of detention.

(i) He submits that the impugned detention order is vague as in paragraph No.4(a) of the said order, a vague statement is made as 'many cases are registered against him and his associates'. He, therefore, submits that the said term is vague and there are no details given which has caused prejudice to the petitioner/detenu.

(ii) He further submits that though it is alleged that the petitioner/detenu has formed a gang of like minded criminals from the above areas, no details of the gang members are given and hence the impugned order is vague. He relied upon the judgment reported in **(1989) 4 Supreme Court Cases 43** in the case of **Abdul Razak Nannekhan Pathan Vs. Police Commissioner, Ahmedabad & Anr.**, in support of his contentions.

(iii) He further states that illegible document was served on the petitioner, which was relied upon by the detaining authority, while passing the detention order. He further placed reliance upon the

judgment of this court in the case of **Munna Dilawar Khan Vs. The Commissioner of Police & Ors. in Criminal Writ Petition No.3953 of 2013** dated **06th January, 2014** to support his contention that if the document supplied to the petitioner is illegible, the same vitiates the detention of the petitioner. He further submits that translation of the judgment relied upon by the detaining authority was not made available to the petitioner and on that ground also the impugned order is unsustainable.

(iv) It is further submission that the satisfaction recorded in paragraph No.11 of the grounds of detention is not genuine and the competent court has granted bail in all the three cases, so also the preventive actions like chapter cases and externment cases are dropped for defective orders by the competent authorities. Thus, the impugned detention order is vitiated. Reliance is also placed in the case reported in **(1990) 2 Supreme Court Cases 629** in the case of **Vashisht Narain Karwaria Vs. State of U.P. & Another**. The learned counsel, therefore, urged that the impugned detention order is vitiated and the same is liable to be quashed and set aside.

6. The learned APP supports the impugned order.

(a) It is argued that the alleged illegible document, which is referred by the petitioner, is his own bail application and the order passed thereon by the learned Additional Sessions Judge, Kalyan, is clearly legible.

She has relied on the judgment reported in **AIR 1981 Supreme Court 1191** in the case of **Mst. L.M.S. Ummu Saleema Vs. B. B. Gujaral & Anr.**, to urge that the order passed on the bail application which the petitioner claims to be illegible was only referred and was not relied upon, and hence, it is not necessary to furnish the copies of documents of which casual or passing reference may be made in the course of narration of facts and which are not relied upon by authority in making the order of detention. She has further pointed out the reply affidavit filed by the detaining authority, wherein it is averred that the Marathi transcription of the order 'issue notice, returnable on 29/11/2018 was not given to the detenu at the time of execution of order of detention, but said order has been explained to him in Marathi and he has made signature on it by way of acknowledgment of the same'. There is further averment that translation of the bail application and order thereon dated 13th December, 2018 has been furnished to the detenu in the language

known to him. Hence, there is no substance in the said contention of the petitioner.

(b) It is further argued that so far as the ground of vagueness is concerned, paragraph No.4 (a) of the grounds of detention, statements are not vague. Infact, the same is the narration of the complainant named therein, which is reproduced in paragraph No.4(a) and that cannot be said to be vague.

(c) In reply of ground No.5(c), the learned APP states that there is difference between the preventive action and the action of detention under the said Act. She placed reliance in the authority reported in **2001 (2) Mh.L.J. 437** in the matter of **Vinod Vithal Rane Vs. R.H. Mendonca & Ors.**, to support the said contention.

(d) It is argued that the detention authority has recorded subjective satisfaction and no fault can be found with the impugned detention order.

7. In our considered view, there is no substance in the grounds raised by the petitioner. There is no vagueness in the order and grounds of detention, as is sought to be contended by the petitioner. Paragraph 4(a) contains the narration from the statement

of the complainant Rahul Samarbahadur Singh. The term 'many cases' referred in the same is from statement of Rahul Singh. The detaining authority has given a chart of three cases viz., (I) Ambernath Police Station C.R. No. I-193/18 under sections 307, 397, 452, 143, 147, 148, 149, 427, 341, 120(B) of the Indian Penal Code read with sections 4, 25 of the Arms Act read with sections 37(1), 135 of the Maharashtra Police Act, (ii) Badlapur (W) Police Station C.R. No.I-143/18 under sections 307, 34, 120(B), 201, 182, 211 of the Indian Penal Code read with sections 3, 25 of the Arms Act read with sections 37(1), 135 of the Maharashtra Police Act, and (iii) Ambernath Police Station C.R. No.II-175/18 under sections 3,25 of Arms Act read with sections 37(1), 135 of the Maharashtra Police Act. C.R. Nos.I-193/18 and I-143/18 of Ambernath Police Station and Badlapur (W) Police Station are pending in the court and C.R. No.II-175/18 of Ambernath Police Station is under investigation. Thus, the detaining authority has relied upon the cases, the details of which were mentioned in the grounds of detention. Hence, there is no substance in the argument of the petitioner that the impugned order suffers from vice of vagueness.

8. The second contention is non-furnishing of the details of gang has vitiated the impugned order, is also unacceptable. In the grounds of detention, the names of associate gang members of the petitioner are mentioned, viz., Chetan Jaypatkar, Nagesh Dande, Apaya Dande and Anand. In this view of the matter the said ground is not available to the petitioner.

9. The another argument of the learned counsel for the petitioner that the detaining authority relied upon document, of which illegible copy was furnished to the detenu, which has caused prejudice to him and on this count also the impugned detention order is vitiated. This contention is liable to be rejected at threshold. We have perused the document, which is claimed to be illegible. The said document is front page of the certified copy application of the bail application of the petitioner filed before the learned Sessions Court, wherein the upper left hand side portion on the said page is illegible. The said portion is a rubber stamp of Certified Copy Department, mentioning the date on which the certified copy was applied for, when the copy was ready and when the same was delivered to the petitioner. The order passed by the learned

Sessions Judge of issuance of notice is clearly legible. Hence, there is no substance in the said contention raised by the petitioner. So far as the judgment relied upon by the petitioner in Criminal Writ Petition No.3953 of 2013 (cited supra) is concerned, the facts in the same were different as the order passed by the learned Magistrate in the said case was itself not legible and this court was unable to read the entire order.

However, as has been observed hereinabove, in the present case, the order passed by the learned Additional Sessions Judge is clearly legible and the contention of the learned counsel for the petitioner that on the left hand side, the stamp on the said page appears to be blurred / illegible, cannot be accepted. As the said stamp pertains to certified copy details, viz., when the application was received, when the copy was ready and when the said was delivered, that absolutely has no bearing on the detention order of the petitioner and hence the said contention is liable to be rejected.

10. The next contention of the petitioner that since the preventive action initiated against the petitioner in the form of Chapter Case No.03/14 under section 110(e)(g) of the Cr.P.C. was

cancelled by the police and that the proceeding initiated under section 56(1)(a)(b) of the Maharashtra Police Act vide externment case No.80/2017-2018 was cancelled by the Divisional Commissioner in appeal and detaining authority has erred in placing reliance on the same.

The detaining authority has mentioned in the grounds of detention that inspite of preventive actions taken against the petitioner by the police authorities, the same have failed to prevent the petitioner from committing offences. The petitioner has thereafter again indulged in serious offences, which compelled the detaining authority to take strong measures of detentions to prevent the petitioner from committing the offences. In this view of the matter, no fault can be found with the grounds of detention and detention order.

11. The detaining authority has recorded its subjective satisfaction, considering the modus operandi, criminal tendencies and inclinations reflected from the offences referred in the grounds of detention. The detaining authority was justified in coming to the conclusion that the petitioner is likely to continue the criminal and dangerous activities in future. The detaining authority has also

recorded that the petitioner is not gainfully employed. Hence, while recording subjective satisfaction that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, the petitioner is required to be detained, the detaining authority has taken into consideration the criminal record, the intensity of criminal activities and has rightly come to the conclusion that the petitioner is a 'dangerous person' and the petitioner being free at large is prejudicial to the maintenance of public order in the city and the normal laws are just not sufficient to curb the criminal and dangerous activities of the petitioner, as the witnesses are unwilling to come forward and depose against the petitioner.

12. We, therefore, find no substance in the challenge raised by the petitioner in the present Writ Petition, for the reasons recorded above. The Writ Petition filed by the petitioner, being devoid of merits, is liable to be dismissed and same is dismissed as such. Rule discharged. There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

(INDRAJIT MAHANTY, J.)